

## Surface Mining Reclamation and Enforcement, Interior

## § 872.29

### § 872.26 What are minimum program make up funds?

(a) “Minimum program make up funds” are additional moneys we distribute each Federal fiscal year to eligible States and Indian tribes to make up the difference between their total distribution of other funds and \$3 million. The source of these funds is moneys in the Secretary’s 20 percent share of the Fund that are authorized for mandatory distribution.

(b) To be eligible to receive funds under this section, you must meet the following criteria:

(1) You must have and maintain an approved reclamation plan under part 884 of this chapter;

(2) You cannot have certified under section 411(a) of SMCRA;

(3) The total amount you receive annually from State share funds (§872.14) or Tribal share funds (§872.17), historic coal funds (§872.21), and prior balance replacement funds (§872.29) must be less than \$3 million; and

(4) You must need more than the total of funds you will receive from State or Tribal share, historic coal, and prior balance replacement funds to reclaim Priority 1 and 2 coal problems under sections 403(a)(1) and (2) of SMCRA in your State or on Indian lands within your jurisdiction.

(c) We will make funds available to the States of Missouri and Tennessee under this section to reclaim Priority 1 and 2 coal problems included in the AML inventory, provided each State has a reclamation plan approved under part 884 of this chapter.

### § 872.27 How does OSM distribute and award minimum program make up funds?

(a) If you meet the eligibility requirements in §872.26(b), we will distribute these minimum program make up funds to you as follows:

(1) We calculate your total distribution under this part by first adding, in order, your prior balance replacement funds distribution (§872.29), your applicable State or Tribal share funds distribution (§872.14 or §872.17), and your historic coal funds distribution (§872.21). If the sum of these funds is less than \$3 million, we calculate the amount of minimum program make up

funds to add to your distribution under this section to increase it to that level.

(2) For each of the Federal fiscal years 2007 through 2022, we add minimum program make up funds to your combined distribution of prior balance replacement, State or Tribal share, and historic coal funds as shown in the following table:

For each of the Federal fiscal years beginning . . .	The amount of minimum program make up funds we add to your distribution will be . . .
(i) October 1, 2007 and October 1, 2008.	50 percent of the amount that we calculated should be added under paragraph (a)(1) of this section.
(ii) October 1, 2009 and October 1, 2010.	75 percent of the amount that we calculated should be added under paragraph (a)(1) of this section.
(iii) October 1, 2011 and continuing through September 30, 2022.	100 percent of the amount that we calculated should be added under paragraph (a)(1) of this section as long as you have at least \$3 million of Priority 1 and 2 coal problems remaining.
(iv) October 1, 2022 and thereafter.	to the extent funds are available, 100 percent of the amount that we calculated should be added under paragraph (a)(1) until you have less than \$3 million of Priority 1 and 2 coal problems remaining.

(b) We award these funds to you in grants according to the provisions of part 886 of this chapter.

### § 872.28 Are there any restrictions on how you may use minimum program make up funds?

Yes. You may only use minimum program make up funds for:

(a) Priority 1 and 2 coal reclamation under sections 403(a)(1) and (2) of SMCRA;

(b) Priority 3 reclamation that is part of Priority 1 or 2 coal reclamation under sections 403(a)(1) or (2) of SMCRA and §874.13 of this chapter;

### § 872.29 What are prior balance replacement funds?

“Prior balance replacement funds” are moneys we must distribute to you instead of the moneys we allocated to your State or Tribal share of the Fund before October 1, 2007, but did not distribute to you because Congress did not appropriate them. They come from general funds of the United States

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Treasury that are otherwise unappropriated. Under section 411(h)(1) of SMCRA, we distribute prior balance replacement funds to you, the State or Indian tribe, for seven years starting in the Federal fiscal year beginning October 1, 2008.

### § 872.30 How does OSM distribute and award prior balance replacement funds?

(a) We distribute prior balance replacement funds to you as follows:

(1) In an amount equal to the aggregate, unappropriated amount allocated to you before October 1, 2007, under sections 402(g)(1)(A) or (B) of SMCRA;

(2) If you are, or are not, certified under section 411(a) of SMCRA; and

(3) Subject to § 872.35, in seven equal annual installments beginning with the 2008 Federal fiscal year which starts on October 1, 2007.

(b) We award these funds to you in grants according to the provisions of part 885 of this chapter for certified States and Indian tribes or part 886 of this chapter for uncertified States and Indian tribes.

(c) At the same time we distribute prior balance replacement funds to you under this section, we transfer the same amount to historic coal funds from moneys in your State or Tribal share of the Fund that were allocated to you before October 1, 2007. The transferred funds will be available for annual grants under § 872.21 for the Federal fiscal year beginning October 1, 2022, and annually thereafter. We will allocate, distribute, and award the transferred funds according to the provisions of §§ 872.21, 872.22, and 872.23.

### § 872.31 Are there any restrictions on how you may use prior balance replacement funds?

(a) Yes. If you are certified under section 411(a) of SMCRA, you may only use prior balance replacement funds for those purposes your State legislature or Tribal council establishes, giving priority to addressing the impacts of mineral development.

(b) Yes. If you are not certified under section 411(a) of SMCRA, you may only use prior balance replacement funds for the purposes in section 403 of SMCRA, which include:

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(1) Reclamation of coal problems under § 874.12 of this chapter;

(2) Water supply restoration under § 874.14 of this chapter; and

(3) Maintenance of the AML inventory.

### § 872.32 What are certified in lieu funds?

“Certified in lieu funds” are moneys that we distribute to you, the certified State or Indian tribe, in lieu of moneys allocated to your State or Tribal share of the Fund after October 1, 2007. Certified in lieu funds come from general funds of the United States Treasury that are otherwise unappropriated. Beginning with the 2009 Federal fiscal year which starts on October 1, 2008, we distribute certified in lieu funds to you under section 411(h)(2) of SMCRA.

### § 872.33 How does OSM distribute and award certified in lieu funds?

(a) You must be certified under section 411(a) of SMCRA to receive certified in lieu funds.

(b) If you meet the eligibility requirement in paragraph (a) of this section, we distribute these certified in lieu funds to you as follows:

(1) Starting in the Federal fiscal year that begins on October 1, 2008, we annually distribute funds to you based on 50 percent of reclamation fees received for coal produced during the previous Federal fiscal year in your State or on Indian lands within your jurisdiction;

(2) The funds we annually distribute to you are in lieu of moneys we otherwise would distribute to you from State share funds under § 872.14 or Tribal share funds under § 872.17 had you not been excluded from receiving those funds under section 401(f)(3)(B) of SMCRA; and

(3) Subject to § 872.35, we annually distribute certified in lieu funds to you as shown in the following table:

In the Federal fiscal year(s) beginning on . . .	The amount of certified in lieu funds we annually distribute to you will be equal to . . .
(i) October 1, 2008 .....	25 percent of your 50 percent share of annual reclamation fee collections.
(ii) October 1, 2009 .....	50 percent of your 50 percent share of annual reclamation fee collections.
(iii) October 1, 2010 .....	75 percent of your 50 percent share of annual reclamation fee collections.